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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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SUSAN BITTER SMITH - Chairman

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AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY TO EXTEND ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY IN CASA GRANDE, PINAL
COUNTY, ARIZONA.

DOCKET NO. W-01445A-03-0559

PROCEDURAL ORDER

BY THE COMMISSION:

Procedural History

This matter was originally commenced on August 12, 2003, when Arizona Water Company ("AWC") filed an application for an extension of its Certificate of Convenience and Necessity ("CC&N") in Pinal County, Arizona.

In this docket on April 6, 2004, in Decision No. 66893, the Commission granted AWC a CC&N extension,¹ subject to compliance with the following: (1) AWC was required to charge the customers in the extension area the existing Casa Grande rates and charges until further Commission order; (2) AWC was required to file with the Commission, within 365 days of the Decision, a copy of the "Developers' Assured Water Supply for each respective development"; and (3) AWC was required to file with the Commission, within 365 days of the Decision, a main extension agreement ("MXA") associated with the extension area. Decision No. 66893 further stated: "IT IS FURTHER ORDERED that in the event Arizona Water Company fails to meet the above conditions within the time specified, this Decision is deemed null and void without further Order of the Arizona Corporation Commission."

On March 30, 2005, before the April 6, 2005, compliance deadline, AWC filed a Request for Additional Time to Comply with Filing Requirement ("Request for Time").

¹ The Decision included the following legal description for the extension area: "Sections 19, 20, 21, 22, 23, W ½ 24, W ½ 25, 26, 27, 28, 29, & 30, all in Township 6 South, Range 7 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona."

1 On April 7, 2005, "for and on behalf of" Cornman Tweedy 560, LLC ("Cornman"), Robson
2 Communities ("Robson") filed a letter alleging that because AWC had failed to timely satisfy the
3 compliance conditions of Decision No. 66893, the CC&N extension conditionally granted therein
4 was automatically null and void. The letter stated that Cornman owned approximately 1,120 acres
5 within the extension area; that all but approximately 160 acres of that property were included in the
6 EJRW Ranch Master Planned Community ("EJRW Ranch") being developed by Robson, an affiliate of
7 Cornman; and that Cornman desired to obtain water service for its property from Picacho Water
8 Company ("Picacho Water"), another affiliate of Robson, rather than from AWC. The letter also
9 identified Picacho Sewer Company ("Picacho Sewer") as another affiliate of Robson and Cornman.

10 On April 11, 2005, the Commission's Utilities Division ("Staff") recommended that
11 evidentiary hearings be scheduled to consider the merits of AWC's Request for Time and Robson's
12 objection to that request.

13 Numerous filings followed, including a November 2005 Procedural Order granting
14 intervention to Cornman and denying intervention to Picacho Water. A hearing was held in July
15 2006 for the purpose of obtaining evidence on the circumstances and events that had resulted in
16 AWC's not complying with the time periods established in Decision No. 66893. The hearing did not
17 involve a reopening of the Decision granting AWC a CC&N and did not address whether a different
18 water utility should be providing service in the extension area.² AWC, Cornman, and Staff all
19 appeared and participated in the hearing.

20 On July 30, 2007, the Commission issued Decision No. 69722, finding that AWC had been
21 prevented from complying with the Decision No. 66893 requirement to file a Developer's Certificate
22 of Assured Water Supply ("CAWS") because the developer for the Florence Country Estates
23 development, at Cornman's direction, had withdrawn its pending CAWS Application from the
24 Arizona Department of Water Resources' ("ADWR's") consideration. The Commission found that
25 this had made it impossible for AWC to comply with the condition in Decision No. 66893 and was
26 beyond AWC's control. The Commission also found that the Florence Country Estates development

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28 ² Additional detail regarding the procedural history is set forth in the Procedural Orders issued on March 22, 2006, and April 19, 2006.

1 area had been included in an Analysis of Assured Water Supply ("AAWS") issued by ADWR in
2 March 2005 for the EJR Ranch development and that issuance of that AAWS satisfied the objective
3 of the CAWS filing requirement—to ensure the existence of adequate physical water supplies for the
4 development. The Commission determined that "for purposes of compliance, the conditions placed
5 on Arizona Water's CC&N extension in Decision No. 66893 [had] been fulfilled." The Commission
6 expressed concern, however, that the Cornman property might not have a current need or necessity
7 for water service and determined that the record should be reopened, pursuant to A.R.S. § 40-252,
8 and the case remanded to the Hearing Division for further proceedings regarding whether AWC
9 should continue to hold a CC&N for the Cornman property. The Commission put AWC on notice
10 that the subsequent remand proceeding would be for the purpose of considering whether the Cornman
11 property should be deleted from the extension area granted to AWC by Decision No. 66893 and
12 directed the Hearing Division to conduct further evidentiary proceedings in this matter, including
13 appropriate opportunities for intervention and an appropriate opportunity for AWC to present its case.

14 Thereafter, a remand evidentiary hearing was scheduled and then continued, prefiled
15 testimony and other filings were made, and procedural conferences were held. In February 2009, at a
16 procedural conference, AWC and Cornman requested that the continued hearing be vacated and that a
17 recommended order be submitted to the Commission based on the prefiled testimony docketed in
18 anticipation of hearing. AWC and Cornman were directed to make their request in writing, and on
19 March 6, 2009, they filed a Motion for Submission of Matter on the Pleadings, requesting that the
20 Commission's decision be made without an evidentiary hearing. The Motion proposed that the
21 prefiled testimony be admitted into evidence subject to specific objections of the parties either
22 previously made or raised in closing briefs. The Motion was granted in a Procedural Order issued on
23 April 16, 2009, which also established a briefing schedule.

24 On November 29, 2010, a Recommended Order on Remand from Decision No. 69722
25 ("Recommended Order") was issued. The Recommended Order was discussed during the
26 Commission's Open Meetings on December 14, 2010, and February 1, 2011, but no decision was
27 adopted by the Commission. Instead, at the Open Meeting on February 1, 2011, the Commission
28 voted to send the matter back to the Hearing Division for further proceedings to determine "whether a

1 public service corporation, like Arizona Water, in this water challenged area and under the
2 circumstances presented in this case, is providing reasonable service if it is not able or not willing to
3 provide integrated water and wastewater services.” This inquiry is the matter at hand, in which
4 procedural conferences have been held, discovery disputes have been resolved, and a number of
5 filings have been made regarding various issues.

6 On February 24, 2014, a Procedural Order was issued adopting a procedural schedule
7 proposed by Cornman and AWC and scheduling a hearing to commence on August 25, 2014. The
8 hearing date was later continued to September 4, 2014, in response to an unopposed request from
9 Cornman.

10 On May 30, 2014, AWC filed the testimony of Rita P. Maguire, Esq.; Paul Walker; William
11 Garfield; and Fredrick Schneider.

12 On July 18, 2014, Cornman filed the Rebuttal Testimony of Stephen Soriano, Ernest G.
13 Johnson, and Fred Goldman.

14 On July 25, 2014, AWC filed a Notice of Deposition of Ernest G. Johnson Sr.

15 On July 29, 2014, AWC filed a Motion to Strike Pre-Filed Rebuttal Testimony of Ernest G.
16 Johnson and to Preclude His Testimony at Hearing (“Motion”). AWC asserted in its Motion that Mr.
17 Johnson’s testimony should not be admitted because Mr. Johnson held two supervisory positions at
18 the Commission during the pendency of this matter and because Mr. Johnson’s testimony “consists
19 solely of legal conclusions, not facts.”

20 On July 31, 2014, Cornman filed Notices of Deposition for Rita P. Maguire and Paul Walker.

21 On August 1, 2014, AWC filed a First Amended Notice of Deposition of Ernest G. Johnson.

22 On August 11, 2014, AWC filed a Supplement to Motion to Strike Pre-Filed Rebuttal
23 Testimony of Ernest G. Johnson and to Preclude His Testimony at Hearing.

24 On August 12, 2014, a Procedural Order was issued directing Cornman and Staff to file
25 Responses to AWC’s Motion by August 15, 2014, and directing AWC to file a Reply to those
26 Responses by August 20, 2014.

27 On August 15, 2014, Cornman and Staff filed their Responses to AWC’s Motion.

28 On August 20, 2014, AWC filed its Reply to the Responses.

1 On August 22, 2014, a Procedural Order was issued vacating the September 4, 2014, hearing
2 date; scheduling a procedural conference to be held at the time previously set for the hearing; and
3 requiring AWC to file a Supplemental Reply addressing both Cornman's argument that A.R.S. § 38-
4 504(A) ("§ 38-504") superseded A.A.C. R14-3-104(G) ("Rule 104") and was controlling and
5 Cornman's assertion that if Mr. Johnson were precluded from testifying, Mr. Walker likewise should
6 be disqualified because of his prior employment as former Commissioner Spitzer's policy advisor.

7 On August 27, 2014, AWC filed its Supplemental Reply.

8 On September 4, 2014, the procedural conference went forward as scheduled, with AWC,
9 Cornman, and Staff appearing through counsel. AWC and Cornman presented oral argument relating
10 to AWC's Motion, and Staff provided an essentially neutral position. At the conclusion of the
11 procedural conference, the parties were directed to review Oregon Public Utility Commission
12 ("OPUC") Order No. 01-249,³ which addressed a scenario involving use of a former OPUC
13 employee as an expert witness, and to file briefs regarding whether the same or a similar test should
14 be used in this matter. It was determined that the briefs would be due on September 22, 2014.

15 On September 22, 2014, AWC, Cornman, and Staff filed their briefs regarding OPUC Order
16 No. 01-249 (March 21, 2001).

17 On May 7, 2015, a Procedural Order was issued declaring that while A.R.S. § 38-504 does not
18 apply to Mr. Johnson's participation in this matter as a witness for Cornman, A.A.C. R14-3-104(G)
19 does apply to Mr. Johnson's participation in this matter as a witness for Cornman. The Procedural
20 Order also scheduled the hearing in this matter to commence on September 14, 2015, and continue, as
21 necessary, on September 15 through 18, 2015.

22 On September 3, 2015, a telephonic procedural conference was held at the request of AWC
23 and Cornman, with AWC, Cornman, and Staff appearing through counsel. Cornman explained that
24 Mr. Johnson was expected, that day, to hand deliver to the Commission's Executive Director a letter
25 requesting permission, under Rule 104, to appear as a witness for Cornman in this matter

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27 ³ OPUC Order No. 01-249 was issued on March 21, 2001, *in re* Portland General Electric Company's Proposal to
28 Restructure and Reprice Its Services in Accordance with the Provisions of SB 1149 (UE 115) and *in re* PacifiCorp's
Proposal to Restructure and Reprice Its Services in Accordance with the Provisions of SB 1149 (UE 116). OPUC Order
No. 01-249 is described in more detail in the Procedural Order issued in this matter on May 7, 2015.

1 ("Request"). Cornman stated that it desired to have the hearing continued, pending the
2 Commission's decision on Mr. Johnson's Request. Cornman was unable to specify the duration of
3 the requested continuance due to uncertainty regarding the Commission's process for handling the
4 Request. AWC and Staff did not oppose the requested indefinite continuance. It was determined that
5 an indefinite continuance would be granted, that Cornman would file copies of the Request with
6 Docket Control, and that Cornman would file a Status Report within 30 days.

7 IT IS THEREFORE ORDERED that the **hearing** in this matter scheduled to commence on
8 September 14, 2015, and to continue, as necessary, on September 15 through 18, 2015, is hereby
9 **continued indefinitely**, and the hearing dates are hereby **vacated**.

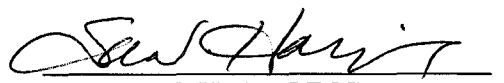
10 IT IS FURTHER ORDERED that Cornman shall, by **September 11, 2015**, file copies of Mr.
11 Johnson's **Request** in this Docket.

12 IT IS FURTHER ORDERED that until Mr. Johnson's Request has been approved or denied,
13 Cornman shall, no later than **every 30 days** after the issuance of this Procedural Order, file a **Status**
14 **Report** describing the processing of Mr. Johnson's Request thus far, providing the date by which
15 Cornman anticipates the process to conclude, proposing dates for the hearing in this matter to go
16 forward, and providing the other parties' positions regarding those proposed dates.

17 IT IS FURTHER ORDERED that the **Ex Parte Rule** (A.A.C. R14-3-113 - Unauthorized
18 Communications) **applies** to this proceeding and shall remain in effect until the Commission's
19 Decision in this matter is final and non-appealable.

20 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
21 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
22 hearing.

23 DATED this 4th day of September, 2015.

24
25 
26 SARAH N. HARPRING
27 ADMINISTRATIVE LAW JUDGE
28

1 Copies of the foregoing mailed/delivered
2 this 4th day of September, 2015, to:

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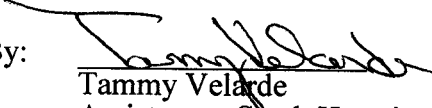
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